

Senate Bill No. 1924

CHAPTER 732

An act to amend Sections 25250.1, 25250.4, 25250.18, 25250.19, 25250.23, and 25250.24 of, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 25, 2000. Filed
with Secretary of State September 27, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1924, O'Connell. Hazardous waste recycling: used oil.

(1) Existing law defines "recycled oil" for purposes of the provisions regulating the handling of used oil and provides specified standards of purity for recycled oil. Existing law exempts used oil that meets specified requirements from regulation by the Department of Toxic Substances Control and requires used oil to be managed as a hazardous waste, unless the used oil meets specified requirements. Existing law requires a used oil recycler to test all recycled oil, as specified. A violation of the laws regulating used oil is a crime.

This bill would revise the definition of "recycled oil" and the conditions under which used oil is exempt from regulation under the hazardous waste control laws for purposes of those provisions. This bill would revise the conditions under which a used oil recycler is required to test recycled oil.

The bill would also correct erroneous references. Since a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would incorporate additional changes in Section 25250.4 of the Health and Safety Code proposed by AB 2573, to be operative only if that bill and this bill are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 25250.1 of the Health and Safety Code is amended to read:

25250.1. (a) As used in this article, the following terms have the following meaning:

(1) (A) “Used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of use or as a consequence of extended storage, or spillage, has been contaminated with physical or chemical impurities. Examples of used oil are spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; industrial oils, including compressor, turbine, and bearing oil; hydraulic oil; metal-working oil; refrigeration oil; and railroad drainings.

(B) “Used oil” does not include any of the following:

(i) Oil that has a flashpoint below 100 degrees Fahrenheit or that has been mixed with hazardous waste, other than minimal amounts of vehicle fuel.

(ii) (I) Wastewater, the discharge of which is subject to regulation under either Section 307(b) (33 U.S.C. Sec. 1317(b)) or 402 (33 U.S.C. Sec. 1342) of the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), including wastewaters at facilities that have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil.

(II) For purposes of this clause, “de minimis quantities of used oil” are small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations, or small amounts of oil lost to the wastewater treatment system during washing or draining operations.

(III) This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases or to used oil recovered from wastewaters.

(iii) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(iv) Oil that contains polychlorinated biphenyls (PCBs) at a concentration of 5 ppm or greater.

(v) (I) Oil containing more than 1000 ppm total halogens, which shall be presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Subpart D (commencing with Section 261.30) of Part 261 of Title 40 of the Code of Federal Regulations.

(II) A person may rebut the presumption specified in subclause (I) by demonstrating that the used oil does not contain hazardous waste, including, but not limited to, in the manner specified in subclause (III).

(III) The presumption specified in subclause (I) is rebutted if it is demonstrated that the used oil that is the source of total halogens at a concentration of more than 1000 ppm is solely either household waste, as defined in Section 261.4(b)(1) of Title 40 of the Code of Federal Regulations, or is collected from conditionally exempt small



quantity generators, as defined in Section 261.5 of Title 40 of the Code of Federal Regulations. Nothing in this subclause authorizes any person to violate the prohibition specified in Section 25250.7.

(2) “Board” means the California Integrated Waste Management Board.

(3) (A) “Recycled oil” means any oil that meets all of the following requirements specified in clauses (i) to (iii), inclusive:

(i) Is produced either solely from used oil, or is produced solely from used oil that has been mixed with one or more contaminated petroleum products or oily wastes, other than wastes listed as hazardous under the federal act, provided that if the resultant mixture is subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations, the mixture is managed as a hazardous waste in accordance with all applicable hazardous waste regulations, and the recycled oil produced from the mixture is not subject to regulation as a hazardous waste under paragraph (2) of subsection (b) of Section 279.10 of Title 40 of the Code of Federal Regulations. If the oily wastes with which the used oil is mixed were recovered from a unit treating hazardous wastes that are not oily wastes, these recovered oily wastes are not excluded from being considered as oily wastes for purposes of this section or Section 25250.7.

(ii) The recycled oil meets one of the following requirements:

(I) The recycled oil is produced by a generator lawfully recycling its oil.

(II) The recycled oil is produced at a used oil recycling facility that is authorized to operate pursuant to Section 25200 or 25200.5 solely by means of one or more processes specifically authorized by the department. The department may not authorize a used oil recycling facility to use a process in which used oil is mixed with one or more contaminated petroleum products or oily wastes unless the department determines that the process to be authorized for mixing used oil with those products or wastes will not substantially contribute to the achievement of compliance with the specifications of subparagraph (B).

(III) The recycled oil is produced in another state, and the used oil recycling facility where the recycled oil is produced, and the process by which the recycled oil is produced, are authorized by the agency authorized to implement the federal act in that state.

(iii) Has been prepared for reuse and meets all of the following standards:

(I) The oil meets the standards of purity set forth in subparagraph (B).

(II) If the oil was produced by a generator lawfully recycling its oil or the oil is lawfully produced in another state, the oil is not hazardous pursuant to the criteria adopted by the department



pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B).

(III) The oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(IV) The oil is not subject to regulation as a hazardous waste under the federal act.

(V) If the oil was produced lawfully at a used oil recycling facility in this state, the oil is not hazardous pursuant to any characteristic or constituent for which the department has made the finding required by subparagraph (B) of paragraph (2) of subdivision (a) of Section 25250.19, except for one of the characteristics or constituents identified in the standards of purity set forth in subparagraph (B).

(B) The following standards of purity are in effect for recycled oil, in liquid form, unless the department, by regulation, establishes more stringent standards:

(i) Flashpoint: minimum standards set by the American Society for Testing and Materials for the recycled products. However, recycled oil to be burned for energy recovery shall have a minimum flashpoint of 100 degrees Fahrenheit.

(ii) Total lead: 50 mg/kg or less.

(iii) Total arsenic: 5 mg/kg or less.

(iv) Total chromium: 10 mg/kg or less.

(v) Total cadmium: 2 mg/kg or less.

(vi) Total halogens: 3000 mg/kg or less. However, recycled oil shall be demonstrated by testing to contain not more than 1000 mg/kg total halogens listed in Appendix VIII of Part 261 (commencing with Section 261.1) of Title 40 of Chapter 1 of the Code of Federal Regulations.

(vii) Total polychlorinated biphenyls (PCBs): 2 mg/kg or less.

(C) Compliance with the specifications of subparagraph (B) or with the requirements of clauses (iv) and (v) of subparagraph (B) of paragraph (1) shall not be met by blending or diluting used oil with crude or virgin oil, or with a contaminated petroleum product or oily waste, except as provided in subclause (II) of clause (ii) of subparagraph (A), and shall be determined in accordance with the procedures for identification and listing of hazardous waste adopted in regulations by the department. Persons authorized by the department to recycle oil shall maintain records of volumes and characteristics of incoming used oil and outgoing recycled oil and documentation concerning the recycling technology utilized to demonstrate to the satisfaction of the department or other enforcement agencies that the recycling has been achieved in compliance with this subdivision.

(D) This paragraph does not apply to oil that is to be disposed of or used in a manner constituting disposal.

(4) “Used oil recycling facility” means a facility that reprocesses or re-refines used oil.

(5) “Used oil storage facility” means a storage facility, as defined in subdivision (b) of Section 25123.3, that stores used oil.

(6) “Used oil transfer facility” means a transfer facility, as defined in subdivision (a) of Section 25123.3, that either stores used oil for periods greater than six days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning agency, or that transfers used oil from one container to another.

(7) (A) For purposes of this section and Section 25250.7 only, “contaminated petroleum product” means a product that meets all of the following conditions:

(i) It is a hydrocarbon product whose original intended purpose was to be used as a fuel, lubricant, or solvent.

(ii) It has not been used for its original intended purpose.

(iii) It is not listed in Subpart D of Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(iv) It has not been mixed with a hazardous waste other than another contaminated petroleum product.

(B) Nothing in this section or Section 25250.7 shall be construed to affect the exemptions in Section 25250.3, or to subject contaminated petroleum products that are not hazardous waste to any requirements of this chapter.

(b) Unless otherwise specified, used oil that meets either of the following conditions is not subject to regulation by the department:

(1) The used oil has not been treated by the generator of the used oil, the generator claims the used oil is exempt from regulation by the department, and the used oil meets all of the following conditions:

(A) The used oil meets the standards set forth in subparagraph (B) of paragraph (3) of subdivision (a).

(B) The used oil is not hazardous pursuant to the criteria adopted by the department pursuant to Section 25141 for any characteristic or constituent other than those listed in subparagraph (B) of paragraph (3) of subdivision (a).

(C) The used oil is not mixed with any waste listed as a hazardous waste in Part 261 (commencing with Section 261.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

(D) The used oil is not subject to regulation as either hazardous waste or used oil under the federal act.

(E) The generator of the used oil has complied with the notification requirements of subdivision (c) and the testing and recordkeeping requirements of Section 25250.19.

(F) The used oil is not disposed of or used in a manner constituting disposal.

(2) The used oil meets all the requirements for recycled oil specified in paragraph (3) of subdivision (a), the requirements of subdivision (c), and the requirements of Section 25250.19.

(c) Used oil recycling facilities and generators lawfully recycling their own used oil that are the first to claim that recycled oil meets the requirements specified in paragraph (2) of subdivision (b) shall maintain an operating log and copies of certification forms, as specified in Section 25250.19. Any person who generates used oil, and who claims that the used oil is exempt from regulation pursuant to paragraph (1) of subdivision (b), shall notify the department, in writing, of that claim and shall comply with the testing and recordkeeping requirements of Section 25250.19 prior to its reuse. In any action to enforce this article, the burden is on the generator or recycling facility, whichever first claimed that the used oil or recycled oil meets the standards and criteria, and on the transporter or the user of the used oil or recycled oil, whichever has possession, to prove that the oil meets those standards and criteria.

(d) Used oil shall be managed in accordance with the requirements of this chapter and any additional applicable requirements of Part 279 (commencing with Section 279.1) of Chapter 1 of Title 40 of the Code of Federal Regulations.

SEC. 2. Section 25250.4 of the Health and Safety Code is amended to read:

25250.4. Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter, unless one of the following applies:

(a) The used oil is excluded from regulation as hazardous waste pursuant to Section 25143.2, and is not subject to regulation as hazardous waste under the federal act.

(b) The used oil has been shown by the generator to meet the requirements of paragraph (1) of subdivision (b) of Section 25250.1 or the used oil is recycled oil and meets the requirements of paragraph (2) of subdivision (b) of Section 25250.1.

SEC. 2.5. Section 25250.4 of the Health and Safety Code is amended to read:

25250.4. (a) Used oil shall be managed as a hazardous waste in accordance with the requirements of this chapter, unless one of the following applies:

(1) The used oil is excluded from regulation as hazardous waste pursuant to Section 25143.2, and is not subject to regulation as hazardous waste under the federal act.

(2) The used oil has been shown by the generator to meet the requirements of paragraph (1) of subdivision (b) of Section 25250.1 or the used oil is recycled oil and meets the requirements of paragraph (2) of subdivision (b) of Section 25250.1.

(b) This section does not apply to dielectric fluid removed from oil-filled electrical equipment that is filtered and replaced, onsite, at



a restricted access electrical equipment area, or that is removed and filtered at a maintenance facility for reuse in electrical equipment and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Subchapter I of Chapter 1 of Title 40 of the Code of Federal Regulations.

(c) For the purposes of this section:

(1) “Oil-filled electrical equipment” includes, but is not limited to, transformers, circuit breakers, and capacitors.

(2) “Restricted access electrical equipment area” means a fenced-off or walled-off restricted access area that is covered by a spill prevention control and countermeasure plan prepared in accordance with Part 112 of Title 40 of the Code of Federal Regulations and that is used in the transmission or distribution of electrical power, or both.

(d) For the purposes of subdivision (b), “filtered” means the use of filters assisted by the application of heat and suction to remove impurities, including, but not limited to, water, particulates, and trace amounts of dissolved gases, by equipment mounted upon or above an impervious surface.

(e) Nothing in this section affects the authority of the department or a certified unified program agency in the event of a spill.

SEC. 3. Section 25250.18 of the Health and Safety Code is amended to read:

25250.18. (a) Any person who transports recycled oil or oil exempted pursuant to paragraph (1) of subdivision (b) of Section 25250.1 shall maintain with each shipment a certification form, provided by the department, which contains all of the following information:

(1) The name and address of the used oil recycling facility or generator claiming the oil meets the requirements of Section 25250.1.

(2) The name and address of the facility receiving the shipment.

(3) The quantity of oil delivered.

(4) The date of shipment or delivery.

(5) A cross-reference to the records and documentation required under Section 25250.1.

(b) Certification forms required in subdivision (a) shall be maintained for three years and are subject to an audit and verification by the department or the board.

SEC. 4. Section 25250.19 of the Health and Safety Code is amended to read:

25250.19. (a) (1) A used oil recycler shall test all recycled oil in accordance with paragraph (2), prior to transportation from the recycling facility, pursuant to applicable methods in the Environmental Protection Agency Document No. Solid Waste 846 or any equivalent alternative method approved or required by the department, and shall ensure and certify the oil as being in

compliance with the standards specified in paragraph (3) of subdivision (a) of Section 25250.1.

(2) The used oil recycler shall test the recycled oil for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1, and for any other hazardous characteristics or constituents for which testing is required in the permit issued by the department for the used oil recycling facility. The permit shall require testing for compliance with the purity standards set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1. The permit may also require testing for other hazardous characteristics and constituents only if the department finds, based upon evidence in the record, all of the following:

(A) There is a reasonable expectation that the recycled oil may exhibit the hazardous characteristic or contain the hazardous constituent at a level that would cause it to be hazardous waste if the recycled oil were a waste, taking into consideration at least all of the following factors:

(i) The conditions included in the facility's permit limiting the wastes that may be accepted at the facility and the conditions requiring testing of the wastes accepted at the facility.

(ii) The types of wastes that historically have been accepted by the facility or similar facilities and the types of wastes that the facility can reasonably be expected to accept in the future, including any new products or constituents.

(iii) Previous test results of recycled oil produced by the facility indicating the presence, or lack of the presence, of the constituent or characteristic at a level that would cause it to be hazardous waste if the recycled oil were a waste.

(iv) The treatment technologies and methods authorized in the facility's permit for production of the recycled oil and the extent to which those treatment technologies and methods remove or reduce the constituents or characteristics from the wastes accepted by the facility; and

(B) The hazardous characteristic or constituent cannot reasonably be expected to be present in products produced from crude oil similar to the recycled oil products produced by the facility at levels that would cause the product produced from crude oil to be a hazardous waste if it were a waste.

(3) Records of tests performed pursuant to this subdivision and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department or the board. The department shall perform an audit and verification on a periodic basis. The department may charge a reasonable fee for this activity.

(b) A generator claiming that used oil is exempted from regulation pursuant to paragraph (1) of subdivision (b) of Section

25250.1 shall ensure that all used oil for which the exemption is claimed has been tested and certified as being in compliance with the standards specified in paragraph (1) of subdivision (b) of Section 25250.1, prior to transportation from the generator location. A generator lawfully recycling its own oil shall ensure that all recycled oil has been tested and certified as being in compliance with the requirements specified in paragraph (2) of subdivision (b) of Section 25250.1. Records of tests performed and a copy of each form completed pursuant to Section 25250.18 shall be maintained for three years and are subject to audit and verification by the department, the unified program agency, or the board.

(c) Used oil recyclers identified in subdivision (a) and generators identified in subdivision (b) shall record in an operating log and retain for three years the information specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 25250.18 on each shipment of recycled or exempted oil.

(d) Operating logs required in subdivision (c) are subject to audit and verification by the department, the unified program agency, or the board.

(e) (1) If oil produced at a used oil recycling facility in this state meets the standards of purity set forth in subparagraph (B) of paragraph (3) of subdivision (a) of Section 25250.1 and is not hazardous due to the presence of any characteristic or constituent for which the department has made a finding required by subparagraphs (A) and (B) of paragraph (2) of subdivision (a), but the oil is hazardous due to the presence of another constituent or characteristic, the facility operator shall not be subject to any penalty pursuant to this chapter for failing to manage the oil as a hazardous waste, unless both of the following apply:

(A) While the oil was onsite at the facility, the operator of the facility knew, or reasonably should have known, that the oil failed to meet those criteria.

(B) The facility operator failed to take action to manage the oil as a hazardous waste when the oil was determined to be hazardous.

(2) The department may exercise its authority, including, but not limited to, the issuance of an order, to a used oil recycling facility pursuant to Section 25187, to ensure that oil subject to this subdivision is managed as a hazardous waste pursuant to this chapter.

SEC. 5. Section 25250.23 of the Health and Safety Code is amended to read:

25250.23. Any person who transports used oil shall register as a hazardous waste hauler and, unless specifically exempted or unless the used oil is not regulated by the department pursuant to subdivision (b) of Section 25250.1, shall comply with all provisions of this chapter.

SEC. 6. Section 25250.24 of the Health and Safety Code is amended to read:

25250.24. (a) Except as provided in subdivision (b), any person who generates, receives, stores, transfers, transports, treats, or recycles used oil, unless specifically exempted or unless the used oil is not regulated by the department pursuant to subdivision (b) of Section 25250.1, shall comply with all provisions of this chapter.

(b) Used oil which is removed from a motor vehicle and which is subsequently recycled, by a recycler who is permitted pursuant to this article, shall not be included in the calculation of the amount of hazardous waste generated for purposes of the generator fee imposed pursuant to Section 25205.5.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 25250.4 of the Health and Safety Code proposed by both this bill and AB 2573. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 25250.4 of the Health and Safety Code, and (3) this bill is enacted after AB 2573, in which case Section 2 of this bill shall not become operative.

